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December 15, 2010

**Via Electronic Filing**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: Notice of *Ex Parte* Presentation In the Matter of Connect America Fund WC Docket No. 10-90; A National Broadband Plan for Our Future GN Docket No. 09-51; and High-Cost Universal Service Support WC Docket No. 05-337**

Dear Ms. Dortch:

On behalf of the Rural Broadband Alliance (“Alliance”), I met on December 14, 2010 with Amy Bender, Randy Clarke, Patrick Halley, and Elise Kohn of the Wireline Competition Bureau (“WCB”) Staff. The purpose of the meeting was to discuss the Commission’s efforts with respect to reform of universal service funding and intercarrier compensation. This letter summarizes our discussion.

**Impact Of Uncertainty On Infrastructure Investment And Job Creation**

We initially discussed the growing concerns of rural carriers with respect to the predictability and stability of the cost recovery mechanisms upon which the provision of universal service relies. An unintended and ironic consequence of the Commission’s ongoing consideration of changes in the universal service and intercarrier compensation mechanisms is the fact that it has resulted in rural industry uncertainty which is impacting infrastructure investment and job creation - the very goals upon which Chairman Genachowski is focused. By way of examples, I cited instances where rural companies had received approval of broadband stimulus funding, but have subsequently declined the funding because of financial concerns raised by the uncertainty of the Commission’s proposals to reform universal service cost recovery mechanisms. The Alliance respectfully asks the Commission to undertake expedient consideration and action on the issues discussed during the course of the meeting in order to restore much needed stability and predictability in the universal service mechanisms.

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Commitment of the Rural Broadband Alliance In Its Support Of The Ongoing Efforts Of The Rural Incumbent National Associations

The Alliance is a growing coalition of more than one hundred rural incumbent local exchange carriers formed to advance sensible, evidence-based policies for the deployment and adoption of broadband services for all of the nation's citizens including consumers and businesses residing in rural, insular and high cost-to-serve areas of the nation. The Alliance is committed to working with the rural telecommunications associations and supportive of their efforts to develop long-term solutions to address needed reform of the universal service funding mechanisms including intercarrier compensation.

With respect to the provision of universal service in rural America, the ultimate objective of these proceedings is to ensure that, with the evolution of the telecommunications network to broadband technology, the universal service system is appropriately structured to ensure that rural consumers have access to services and rates that are reasonably comparable to those available in the lower cost-to-serve urban areas of the nation. This is not the first time that technological evolution has required a deliberate review of the mechanisms utilized to foster universal service. The evolution of the telecommunications network from analog to digital in the 1980s necessitated the need to establish new universal service mechanisms, and resulted in the creation of both the Universal Service Fund and access charges. The evolution to a broadband network requires revision of these mechanisms to better reflect the usage and value created by the growth of broadband.

Today's evolution of the broadband network results in both growing consumer needs for service and changes in the consumer's utilization of the network. As a result, there is a clear and imperative need to ensure that universal service mechanisms are structured in a manner that provides the required statutory result mandated by Section 254 of the Communications Act: a sustainable and predictable mechanism that provides funding sufficient to ensure the provision of universal service to rural consumers at service levels and rates reasonably comparable to those available to urban consumers.

The Experience Of The Alliance Members And That Of Other Rural Rate-Of-Return Regulated Providers Offers The Commission A Wealth Of Information Regarding The Deployment And Maintenance Of Networks That Support Advanced Services.

In order to achieve this objective, the Commission has initiated both a Notice Of Inquiry (NOI) and a Notice of Proposed Rulemaking (NPRM) in the above-referenced proceedings, and the Alliance anticipates that the Commission will soon undertake the issuance of additional NPRMs. The issues that the Commission will address as it moves forward are both numerous and fact laden.

The members of the Alliance, and other rural rate of return regulated carriers have a wealth of information regarding the capital and operational expense of serving rural areas with

varying geographical, demographic, and economic conditions throughout the nation. In order to assist the Commission in its endeavor, members of the Alliance are committed to work with the Commission's staff to provide both empirical and anecdotal data regarding the deployment and maintenance of universal service networks in rural areas.

The Determination Of Appropriate Universal Service Mechanisms To Support Broadband Technology Requires The Fundamental Revision Of The Definition Of Services And Functionalities That Constitute Universal Service

As the Commission goes forward in its effort to formulate appropriate changes in the universal service funding mechanism to address the evolving need for broadband connectivity throughout the nation, the Alliance suggests that the first needed step is for the Commission to renew and complete its effort to review and revise what services and functionalities should be included in the definition of universal service. In connection with its continuing consideration of universal service high-cost network support and its consideration of the remand resulting from the decision of the United States Court of Appeals for the Tenth Circuit in *Qwest Communications International, Inc. v. FCC*, the Commission stated:

Given the changes in consumer buying patterns, the competitive marketplace, and the variety of pricing plans offered by carriers today, stand-alone local telephone rates may no longer be the most relevant measure of whether rural and urban consumers have access to reasonably comparable telecommunications services at reasonably comparable rates.<sup>1</sup>

The Commission further observed:

Although only local telephone service is supported by the high-cost universal service mechanism at this time, section 254(b)(3) of the Act provides that consumers in all regions of the nation should have access to telecommunications and information services, *including advanced services and interexchange services*, at reasonably comparable rural and urban rates. (Footnote omitted). In light of the fact that most consumers subscribe to both local and long distance services from the same provider, would it be more consistent with the statute, and the Commission's obligation to advance universal service, (footnote omitted) to define reasonably comparable rates for purposes of the non-rural mechanism in terms of combined local and long distance rates?<sup>2</sup>

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<sup>1</sup> *In the Matter of High-Cost Universal Service Support*, WC Docket No. 05-337, and *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, **Further Notice of proposed Rulemaking**, released December 15, 2009, para. 15.

<sup>2</sup> *Id.*, at para. 18.

The Alliance respectfully urges the Commission to act on the identified need to redefine the services and network functionalities, including broadband capability, supported by the high-cost mechanism. The Alliance further urges the Commission to undertake to engage in a similar review of the definition of universal services and functionalities on an annual basis in recognition of the rapidly evolving utilization of broadband.

By moving expediently to redefine the level of telecommunications services and network functionalities included in the definition of universal service in a manner consistent with the Commission's duties pursuant to § 254(c)(1) of the Act, the Commission will set the necessary foundation to move forward with the consideration and resolution of needed changes to the Universal Service Fund mechanisms.

Moreover, by acting on the needed redefinition of universal service and committing to continual review and revision of that definition, the Commission will remove one aspect of uncertainty that has arisen from the Commission's initial consideration of the recommendations of the Broadband Plan.<sup>3</sup> A precise redefinition of universal service will alleviate uncertainty with respect to the level of network services and functionalities that may be subject to universal service support. In the past, rural carriers were encouraged to utilize universal service support to build networks that supported advanced services. A clear definition of universal service that recognizes both technological evolution and the changes in consumer expectations will not only remove the recently created uncertainty, but will also provide an important measure of accountability with respect to the use of USF.

The Alliance respectfully submits that the Commission can and should act to restore the much needed financial stability and predictability required in the provision of universal service in high-cost rural areas. Accordingly, the Alliance recommends that the Commission undertake expedient action not only on the matter of redefining universal services and functionalities supported by USF, but also on several other matters outlined below that were discussed at the meeting.

#### Additional Issues For Consideration To Restore Financial Stability and Predictability In The Provision Of Universal Service In Rural High Cost Areas

##### **1. Recovery of established capital and operational expenses to provide universal service**

The Alliance understands the Commission's intent to constrain the legacy universal service mechanisms and to establish the Connect America Fund to provide universal service funding for broadband network investment and operations. Expedient resolution of how existing network investment and operational expenses will be treated is needed to ensure that the support mechanisms continue to be sustainable and predictable in accordance with § 254(b)(5).

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<sup>3</sup> Although rural carriers previously understood that the Commission's policy and cost recovery rules encouraged the deployment of universal service networks that supported evolving levels of advanced services, the issuance of the Broadband Plan and proposals to eliminate existing cost recovery mechanisms with no identified replacement mechanisms has had a significant impact on planning network investment and resulting job creation in rural areas.

The Alliance submits that the Commission can respond to the issue of cost recovery of established rural rate-of-return carrier universal service expenses in a manner that not only provides predictability and stability, but that is also responsive to the Commission's intent to ensure accountability, encourage efficiencies and provide an alternative optional incentive option for carriers subject to rate of return regulation. By soliciting comment on this matter, the Alliance further suggests that the Commission can take expedient action that is consistent both with its concerns regarding constraint on the existing mechanisms and with the need to provide a sustainable and predictable support mechanism.

## **2. Defining and quantifying funding needs at the outset of the implementation of the proposed Connect America Fund (CAF)**

The Alliance understands that it is the intent of the Commission to develop new long-term processes to define and quantify universal service funding. The Alliance respectfully suggests that in order to maintain sustainable and predictable support mechanisms, the Commission should recognize that operational stability requires continuity while the Commission proceeds with its intent to develop new processes. During this interim period, the Alliance recommends that, with respect to rural rate of return carriers, the Commission should: 1) continue to utilize its existing rules that establish the interstate revenue requirement for those carriers, recognizing the direct assignment to the interstate jurisdiction of expenses incurred to provide broadband service functionality included within a revised definition of universal service; and, 2) establish and maintain mechanisms that provide the carriers with a meaningful opportunity to recover the costs a carrier incurs in the provision of universal service.

The Commission should also consider how to determine funding during this interim period for universal service providers serving areas where the incumbent provider is not a rural rate of return carrier. Parties should have an opportunity to address: whether all providers seeking CAF support should provide actual cost-support information similar to the manner in which rural rate-of-return carriers demonstrate their costs; or whether alternative processes, such as the use of an imputed cost-basis, can be utilized to quantify funding requirements. The Alliance respectfully submits that by seeking comment on this matter and acting expediently, the Commission can alleviate the existing financial instability and the adverse impact on infrastructure investment and job creation that results from the absence of predictability.

Moreover, the Alliance is confident that the Commission can act to establish mechanisms to quantify universal service funding from the CAF in a manner consistent with the Commission's objective to ensure that the universal service mechanisms are both fully subject to accountability and encourage efficiencies. In addition, by acting to redefine universal service, as recommended and discussed above, the Commission's actions will further provide specific guidance regarding the targeting of funding in a manner that encourages accountable infrastructure investment consistent with articulated Commission goals.

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**Acting on intercarrier compensation and access reform**

The Alliance members suggest that the Commission seek comment on proposals to transition rural carrier cost recovery dependence on access charge revenue, and act expediently to move forward with the transition. For example, the Commission could freeze current levels of access charges and initiate reductions in the charges to be undertaken through a transition. As contemplated by the Broadband Plan, any such freeze or reductions in access charges will require the establishment of a funding mechanism to provide to rural carriers the revenues that are currently generated by access charges. The Alliance also urges the Commission to consider and address the continuing and growing problem commonly referred to as “phantom traffic.”

The Commission should also consider changes in conditions and network utilization subsequent to the implementation of the access charge regime in 1984 as a mechanism to recover a significant portion of the costs of providing universal service. The Alliance submits that the Commission can determine and establish a rational initial transition subject to subsequent review and adjustment depending on the future utilization or migration away from the utilization of access services. Finally, the Commission should also consider the impact on universal service of continued cost recovery reliance on intrastate access service revenues by soliciting information and proposals from state regulators and all parties.

Conclusion

In concluding our meeting, I emphasized that the Alliance urges the Commission to address concurrently both the long-term universal service mechanism issues it has raised, and also the issues that require expedient attention and action. Interim action is needed in order to restore the stability and predictability required to ensure the sustainability and growth of universal service in the nation’s rural areas that, in turn, supports and encourages needed infrastructure investment and fosters rural economic development. Proceeding in this manner is not only vital to Alliance members and other rural carriers, but also essential to rural consumers.

I am filing this letter electronically with your office for inclusion in the record of each of the above-referenced proceedings pursuant to section 1.1206 of the Commission’s Rules. If you have any questions, please do not hesitate to contact me at (202) 333-1770.

Sincerely,

s/Stephen G. Kraskin

cc: Amy Bender  
Patrick Halley  
Randy Clarke  
Elise Kohn